

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DAYA SENANAYAKE,

Plaintiff,

v.

DAVID RODLI et al.,

Defendants.

3:08-cv-210-RCJ-VPC

ORDER

Currently before the Court is a Motion for Order Releasing Security (#97). The Court heard oral argument on June 11, 2012.

BACKGROUND

In January 2009, Plaintiff Daya Senanayake, a resident of Colombo, Sri Lanka, filed a first amended complaint ("FAC") on behalf of himself and derivatively on behalf of Defendant Solarmission Technologies, Inc. ("SMT"), a Nevada corporation. (FAC (#35) at 1). Plaintiff sued SMT for injunctive relief, breach of contract, breach of good faith and fair dealing, declaratory relief, and accounting, (*Id.* at 1, 17, 20-23). In August 2009, Judge Sandoval granted SMT's Motion to Dismiss First Amended Complaint (#40) in its entirety. (Order (#92) at 17).

In May of 2008, SMT filed a demand for security of costs in the sum of \$500 pursuant to NRS § 18.130. (Demand for Security (#4) at 1-2). That same month, Plaintiff filed a notice of nonresident bond in the amount of \$500 in response to SMT's written demand. (Nonresident Bond (#6) at 1-2).

In August 2009, SMT filed a Bill of Costs requesting costs in the amount of \$8,452.74

1 to be taxed against Plaintiff. (Bill of Costs (#94) at 1). Plaintiff did not file any objections.
2 (See *generally* Docket Sheet). In September 2009, the Clerk of the Court filed the Bill of Costs
3 for the full amount. (Costs Taxed (#95) at 1). In February 2012, this Court issued a minute
4 order directing the Clerk of the Court “to release all remaining funds to the rightful owner.”
5 (Minute Order (#96) at 1).

6 SMT now files the pending motion.

7 DISCUSSION

8 SMT moves for an order directing the Clerk of the Court to release the \$500 security
9 to SMT to satisfy, in part, the costs that have been taxed against Plaintiff. (Mot. for Release
10 (#97) at 2).

11 Plaintiff did not file a response. (See *generally* Docket Sheet).

12 In reply, SMT files a notice of non-opposition pursuant to Local Rule 7-2(d). (Reply to
13 Mot. for Release (#99)).

14 In this case, the Court grants the motion to release the \$500 security to SMT to satisfy,
15 in part, its bill of costs against Plaintiff. First, Plaintiff failed to respond to this motion and, thus,
16 consents to the release. See Nev. Loc. R. 7-2(d) (stating that “[t]he failure of an opposing
17 party to file points and authorities in response to any motion shall constitute a consent to the
18 granting of the motion”). Second, the express purpose of filing the \$500 security was to
19 reimburse the defendant for such costs. See Nev. Rev. Stat. § 18.130(1) (stating that a
20 defendant may require an out-of-state plaintiff to file “security for the costs and charges which
21 may be awarded against such plaintiff”). As such, the Court grants SMT’s Motion for Order
22 Releasing Security (#97).

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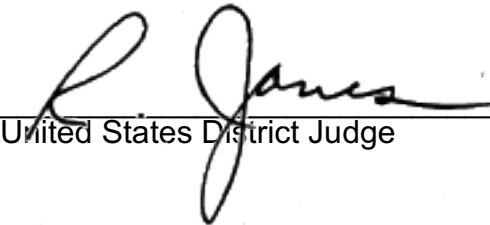
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CONCLUSION

For the foregoing reasons, IT IS ORDERED that the Motion for Order Releasing Security (#97) is GRANTED.

The Clerk of the Court shall enter an order releasing the security to SMT.

DATED: This 6th day of July, 2012.


United States District Judge